

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS,

Complainant,

and

A-1 MASTER ROOFING, INC.,

Respondent.

CASE NO. OSH 2007-9

ORDER NO. 245

PRETRIAL ORDER

PRETRIAL ORDER

Pursuant to the initial conference in this matter held by the Hawaii Labor Relations Board ("Board") on May 9, 2007, by conference call, and attended by Leo B. Young, Deputy Attorney General, for Complainant, and Gina Stephens, for Respondent, IT IS HEREBY ORDERED THAT:

1. The issues to be determined at trial are as follows:
 - A. Whether all citation items resulting from Inspection No. 310389507, including the characterizations and penalties, are valid and proper.
 - i. Citation 1 Item 1 alleged 29 CFR 1926.501(b)(13) was violated because two employees working 10 to 13 feet above the lower level on a roof were not utilizing any form of fall protection which exposed the employees to serious injuries in the event of a fall to the lower level.

Respondent was previously cited for a violation of this or an equivalent standard in Inspection No. 308487933, Citation 1 item 1, issued on July 18, 2005, which became a final order on August 7, 2005, and/or Inspection No. 308489137, Citation 1 item 1, issued on September 27, 2005, which became a final order on October 18, 2005, and/or Inspection No. 309457042, Citation 1 item, 1, issued on March 31, 2006, and which became a final order on April 20, 2006.

The violation was characterized as "repeat." A penalty of \$6,000.00 was imposed.

- ii. Citation 2 Item 1 alleged that 29 CFR 1926.503(a)(2) was violated because “[a]n employee without any type of fall protection working on a roof with a 10 to 13 foot fall to the lower level was not provided with the required fall protection training” which exposed the employee to serious injuries in the event of a fall to the lower level.

The violation was characterized as “serious.” A penalty of \$3,000.00 was imposed.

- B. Complainant alleges that the contest is untimely filed.
- C. Respondent raises unforeseeable or undiscoverable employee misconduct as an affirmative defense.
2. The deadline for the parties’ final naming of witnesses is **June 8, 2007**. Each party shall provide a list of the names of witnesses it plans to call at trial, along with the witnesses’ addresses and expected area of testimony, to the other party and to the Board by this date.
3. The discovery cutoff date is **July 9, 2007**. All other discovery, including depositions and document requests, must be completed by this date.
4. Trial in this matter is scheduled for **August 9, 2007**, at 9:30 a.m., or as soon thereafter as this case can be heard, in the Board’s hearing room located at Room 434, 830 Punchbowl Street, Honolulu, Hawaii, 96813. The trial will continue from day-to-day until completed.
5. Hereafter, this Pretrial Order shall control the course of proceedings and may not be amended except by consent of the parties and the Board, or by order of the Board.

DATED: Honolulu, Hawaii, May 15, 2007.

HAWAII LABOR RELATIONS BOARD


BRIAN K. NAKAMURA, Chair


EMORY J. SPRINGER, Member

DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS v. A-1 MASTER
ROOFING, INC.
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SARAH R. HIRAKAMI, Member

NOTICE TO EMPLOYER

You are required to post a copy of this Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted at least five working days prior to the trial date. Further, you are required to furnish a copy of this Order to a duly recognized representative of the employees, if any, at least five working days prior to the trial date.

Copies sent to:

Leo B. Young, Deputy Attorney General
Gina F. Stephens